

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ERIC SKANSGAARD, as an individual and)
as a representative off the classes,)

Plaintiff,) NO.

v.)

BANK OF AMERICA, N.A. and BAC)
HOME LOANS SERVICING, L.P.)

Defendants.)

**DEFENDANTS' NOTICE OF
REMOVAL OF ACTION**

PLEASE TAKE NOTICE THAT Defendants Bank of America, N.A. ("BANA") and BAC Home Loans Servicing, L.P. ("BAC"), collectively referred to as "Defendants," hereby remove the above-captioned action currently pending in the Superior Court of the State of Washington for the County of King. Removal is based on 28 U.S.C. §§ 1331 and 1332(d), and authorized by 28 U.S.C. § 1441.

BACKGROUND

1. On or about May 17, 2011, Plaintiff Eric Skansgaard ("Plaintiff") filed a Class Action Complaint ("Complaint" or "Compl."), on behalf of himself and two putative classes of Washington mortgage borrowers, with the Clerk of the Superior Court of the State of

1 Washington for the County of King (the “State Court Action”). The State Court Action was
2 assigned Docket No. 11-2-17796-3 SEA.

3 2. BANA and BAC are named as defendants in the Complaint. The Complaint
4 purports to assert claims for breach of contract, for breach of the implied covenant of good
5 faith and fair dealing, for violation of the Washington Consumer Protection Act, RCW §
6 19.86.010 *et seq.*, and for declaratory judgment.

7 3. On May 17, 2011, Defendants received a copy of the Complaint in the State
8 Court Action from their counsel, who received it from Plaintiff’s counsel. The May 17, 2011
9 receipt of the Complaint was the first time either Defendant had received a copy of the initial
10 pleading in the State Court Action. This removal is therefore timely because Defendants
11 removed the State Court Action within 30 days after the May 17, 2011 receipt of the
12 Complaint. *See* 28 U.S.C. § 1446(b).

13 4. Pursuant to 28 U.S.C. §§ 1332(d), 1446(a) and 1441(a), this Notice of
14 Removal is being filed in the United States District Court for the Western District of
15 Washington, which is part of the “district and division” embracing the place where this action
16 was filed – King County, Washington.

17 5. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28
18 U.S.C. § 1446(a).

19 6. BAC and BANA have satisfied all procedural requirements of 28 U.S.C. §
20 1446 and thereby remove this Action to the United States District Court for the Western
21 District of Washington pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1453.

22 7. Appended hereto as Exhibit A is a copy all process, pleadings, and orders
23 served upon Defendants in the State Court Action. *See* 28 U.S.C. § 1446(a).

24 8. Appended hereto as Exhibit B is a copy of the Notice of Removal to All
25 Adverse Parties, which will be promptly served upon Plaintiff’s counsel and filed with the
26

1 Clerk of the Superior Court of the State of Washington for the County of King, pursuant to 28
2 U.S.C. § 1446(d).

3 9. Appended hereto as Exhibit C is a copy of the Notice to Clerk of Removal to
4 Federal Court, which will be promptly filed with the Clerk of the Superior Court of the State
5 of Washington for the County of King, pursuant to 28 U.S.C. § 1446(d).

6 10. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice
7 Act of 1988, no bond is required in connection with this Notice of Removal. Pursuant to
8 Section 1016 of the Act, this Notice need not be verified.

9 11. Based upon the reasons stated herein, this Court has jurisdiction over this
10 matter pursuant to 28 U.S.C. §§ 1331 and 1332(d), and the claims may be removed to this
11 Court under 28 U.S.C. §§ 1441 and 1446.

12 12. Although consent to removal is not required under the Class Action Fairness
13 Act, 28 U.S.C. § 1453(b), BAC and BANA both consent to removal of this action.

14 **STATUTORY REQUIREMENTS – 28 U.S.C. §§ 1332(d), 1453**

15 13. Removal of this case is proper pursuant to the Class Action Fairness Act of
16 2005 (“CAFA”), codified at 28 U.S.C. §§ 1332(d), 1453.

17 14. This Court has subject matter jurisdiction pursuant to CAFA, 28 U.S.C. §
18 1332(d),¹ because: (1) the putative class action consists of at least 100 proposed class
19 members; (2) the citizenship of at least one putative class member is different from that of at
20 least one of the Defendants; and (3) the aggregate amount placed in controversy by the claims
21

22 ¹ 28 U.S.C. § 1332(d)(2) provides that:

23 The district courts shall have original jurisdiction of any civil action in which the matter in controversy
24 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which—

25 (A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

26 (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any
defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a
citizen or subject of a foreign state.

1 of the plaintiffs and the proposed class members exceeds the sum or value of \$5,000,000,
2 exclusive of interest and costs.

3 15. Number of Class Members. Removal is proper under 28 U.S.C. §
4 1332(d)(5)(B) because the number of members of the proposed plaintiff classes exceeds 100.
5 Plaintiff contends that “hundreds of Defendants’ customers satisfy the definition” of the
6 putative classes. Compl. ¶ 28.

7 16. Citizenship of Parties. Diversity of citizenship exists between the parties
8 pursuant to 28 U.S.C. § 1332(d)(2).

9 17. Plaintiff is a resident of Carson City, Nevada, and is the borrower under a
10 mortgage loan owned or serviced by Defendants. Compl. ¶ 8.

11 18. Defendant BANA is, and at all times relevant to the State Court Action was, a
12 national bank with its principal and main place of business in Charlotte, North Carolina.
13 Therefore, for the purposes of assessing the citizenship of BANA, it is considered a citizen of
14 North Carolina. *See Wachovia v. Schmidt*, 546 U.S. 303, 318 (2006).

15 19. Defendant BAC is a limited partnership formed under the laws of the State of
16 Texas. In assessing diversity of citizenship for a limited partnership like BAC, the citizenship
17 of the partnership’s individual partners controls. *Group Dataflux v. Atlas Global Group, L.P.*,
18 541 U.S. 567, 569 (2004) (noting the “accepted rule” that a limited partnership “is a citizen of
19 each State or foreign country of which any of its partners is a citizen”). BAC’s only partners
20 are BAC G.P., LLC and BANA L.P., LLC, which are both limited liability companies. The
21 citizenship of a limited liability company is determined by the citizenship of its members.
22 *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.2006). The sole
23 member of both BANA L.P., LLC and BAC G.P., LLC is BANA. Thus, because BANA—
24 and, consequently, BAC G.P., LLC and BANA L.P., LLC—is a citizen of North Carolina,
25 BAC is also a citizen of North Carolina for diversity purposes.

20. Because Plaintiff is a citizen of Nevada, and BANA and BAC are citizens of North Carolina, complete diversity exists between the parties.

21. Amount in Controversy. While Defendants deny that Plaintiffs are entitled to recover any amount, and specifically deny that certification of any class is proper, the amount in controversy with respect to the aggregate claims of the class members, exclusive of interest and costs, exceeds \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2), 1332(d)(6).

22. Plaintiff's "Proposed Washington Over-Insured Class" is defined as:

All persons who have or had a mortgage loan with Defendants that was secured by residential property in the State of Washington and who were required by Defendants to purchase or maintain flood insurance on their property in excess of their principal balance within six years prior to this action's filing date through the date of final disposition of this action.

Compl. ¶ 49. Since September 2009 alone, Defendants believe there have been approximately 1,254 Washington borrowers who fall into this category. Lindenbaum Decl. ¶ 3.

23. Plaintiff alleges that he paid \$1784.40 (\$799.22 + \$985.18) in premiums for allegedly unauthorized flood insurance. *See* Compl. ¶¶ 20, 23. Plaintiff also seeks treble damages under the Washington Consumer Protection Act, RCW § 19.86.090. *See id.* ¶ 59, Prayer for Relief I. With the Consumer Protection Act's treble damages provision applied, the amount in controversy as to Plaintiff, is roughly \$5,353.20. For present purposes, it is assumed based upon the allegations in the Complaint that Plaintiff's asserted damages are representative of those of other class members.

24. When the number of members of the "Proposed Washington Over-Insured Class" is multiplied by the amount in controversy as to each member, CAFA's \$5,000,000 jurisdictional threshold is met: 1,254 multiplied by \$5,353.20 equals \$6,712,912.80. This result is reached without taking into account the amount in controversy as to Plaintiff's "Proposed Washington Force-Placed Class." *See* Compl. ¶27. There are at least 2,548 borrowers who fit the definition of that class. Lindenbaum Decl. ¶ 4. It is clear that if that

1 amount were taken into account, the aggregate amount in controversy would even further
2 outstrip CAFA's jurisdictional threshold.

3 25. Jurisdiction is Mandatory. Jurisdiction is mandatory, not discretionary, under
4 CAFA because Defendants are not citizens of Washington, the "state in which th[is] action
5 was originally filed." 28 U.S.C. § 1332(d)(3).

6 26. No CAFA Exceptions Apply. Although Defendants deny that they bear the
7 burden to show that CAFA's exceptions to jurisdiction in 28 U.S.C. §§ 1332(d)(4), (5), and
8 (9) are inapplicable, none apply.

9 First, the exceptions in 28 U.S.C. §§ 1332(d)(4) do not apply because, as already
10 noted, both Defendants are citizens of North Carolina, and no defendant is a citizen of the
11 State in which the Complaint was originally filed – Washington.²

12 Second, the exception in 28 U.S.C. § 1332(d)(5)(B) does not apply because the
13 number of putative class members is alleged to be in excess of 100.³ See Compl. ¶ 28.

14
15 ² 28 U.S.C. § 1332(d)(4) provides:

16 A district court shall decline to exercise jurisdiction under [CAFA]—

17 (A)

(i) over a class action in which—

18 (I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are
citizens of the State in which the action was originally filed;

19 (II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

20 (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed
plaintiff class; and

21 (cc) who is a citizen of the State in which the action was originally filed; and

22 (III) principal injuries resulting from the alleged conduct or any related conduct of each
defendant were incurred in the State in which the action was originally filed; and

23 (ii) the 3-year period preceding the filing of that class action, no other class action has been filed
asserting the same or similar factual allegations against any of the defendants on behalf of the same
or other persons; or

24 (B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the
primary defendants, are citizens of the State in which the action was originally filed.

25 ³ 28 U.S.C. § 1332(d)(5)(B) provides that CAFA's provisions "shall not apply to any class action in which . . .
26 the number of members of all proposed plaintiff classes in the aggregate is less than 100."

1 Finally, the exception in 28 U.S.C. § 1332(d)(9) does not apply because this case does
 2 not involve a claim under the securities laws and does not relate to the internal affairs and
 3 governance of a corporation or other form of business enterprise.⁴ 28 U.S.C. § 1332(d)(9);
 4 *see generally* Complaint.

5 **STATUTORY REQUIREMENTS – 28 U.S.C. §§ 1331, 1367, & 1441**

6 27. Removal of this case is proper pursuant to 28 U.S.C. § 1441(a), which entitles
 7 a defendant to remove “any civil action brought in a state court of which the district courts of
 8 the United States have original jurisdiction.” This Court has original jurisdiction over this
 9 lawsuit pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).⁵

10 28. Federal Question Jurisdiction. This court has original jurisdiction over
 11 Plaintiff’s action under 28 U.S.C. § 1331 because Plaintiff’s “right to relief necessarily
 12 depends on resolution of a substantial question of federal law.” *Procter v. Vishay Intertech.*
 13 *Inc.*, 584 F.3d 1208, 1219 (9th Cir. 2009). This case turns on the interpretation of Plaintiff’s
 14 mortgage, which secures a loan guaranteed by the Federal Housing Administration (“FHA”),
 15 using a mortgage agreement promulgated by the FHA. Plaintiff asserts that his FHA
 16 mortgage requires that he carry flood insurance only “to the extent required by the Secretary”
 17 of the federal Department of Housing & Urban Development (“HUD”). Compl. ¶ 15. Thus,

18
 19 ⁴ 28 U.S.C. § 1332(d)(9) provides that:

20 [CAFA] shall not apply to any class action that solely involves a claim—

- 21 (A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C.
 22 78p (f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb (f)(5)(E));
 23 (B) that relates to the internal affairs or governance of a corporation or other form of business enterprise
 24 and that arises under or by virtue of the laws of the State in which such corporation or business
 25 enterprise is incorporated or organized; or
 26 (C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by
 or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C.
 77b (a)(1)) and the regulations issued thereunder).

⁵ 28 U.S.C. § 1331 provides that “[t]he district courts shall have original jurisdiction of all civil actions arising
 under the Constitution, laws, or treaties of the United States.”

1 to interpret Plaintiff's FHA mortgage, it will be necessary for the Court to interpret the federal
 2 regulations setting forth HUD's flood insurance coverage requirements. Indeed, the
 3 Complaint contends that among the "questions of law and fact" common to all members of
 4 the putative class are "[w]hether federal law requires borrowers with mortgage loans to
 5 purchase and/or maintain flood insurance in amounts greater than necessary to secure their
 6 principal balance," *id.* ¶ 31(a), and "[w]hether HUD requires borrowers with mortgage loans
 7 to purchase and/or maintain flood insurance in amounts greater than necessary to secure their
 8 principal balance," *id.* ¶ 31(b) (emphasis added). In addition, the Complaint repeatedly makes
 9 reference to federal law as grounds for the relief sought therein. *See id.* ¶¶ 14 (quoting federal
 10 statute regarding flood insurance); 15 (quoting federal regulations regarding flood insurance);
 11 19 (alleging that "[t]he National Flood Insurance Act and its accompanying regulations do not
 12 require flood insurance in excess of a borrower's principal balance" and that "HUD does not
 13 require flood insurance in excess of a borrower's principal balance").

14 29. Supplemental Jurisdiction. Adjudication of the claims asserted in the
 15 Complaint will require resolution of a substantial question of federal law. To the extent
 16 Plaintiff's claims do not require resolution of a substantial question of federal law, this Court
 17 nonetheless has supplemental jurisdiction over those claims as they are so related to the
 18 federal claims that they form part of the same case or controversy. 28 U.S.C. § 1367.
 19 Plaintiff's state-law claims do not raise novel or complex issues of state law or substantially
 20 predominate over her federal claims. *See id.* § 1367(c).

21 CONCLUSION

22 By this notice and its attachments, Defendants do not waive any objections they may
 23 have as to improper service, jurisdiction, or venue or any other defenses or objections to this
 24 Action or the State Court Action. Defendants intend no admission of fact, law, or liability by
 25 this notice, and reserve all defenses, motions, and pleas. Defendants pray that this action be
 26

1 removed to this Court, that all further proceedings in the state court be stayed, and that
2 Defendants obtain all additional relief to which they are entitled.

3 DATED: June 13, 2011

4 LANE POWELL PC

5
6 By s/John S. Devlin

7 John S. Devlin III, WSBA No. 23988
8 Jacob M. Downs, WSBA No. 37982
9 1420 Fifth Avenue, Suite 4100
10 Seattle, WA 98101-2338
11 Telephone: (206) 223-6280
12 Fax: (206) 223-7101
13 E-mail: devlinj@lanepowell.com

14 Of Counsel:

15 GOODWIN PROCTER LLP

16 John C. Englander (*pro hac vice pending*)
17 Matthew Lindenbaum (*pro hac vice pending*)
18 53 State Street
19 Boston, Massachusetts 02109
20 Tel.: 617.570.1000
21 Fax: 617.523.1231
22 E-mail: jenglander@goodwinprocter.com
23 Email: mlindenbaum@goodwinprocter.com

24 Attorneys for Defendants
25 BANK OF AMERICA, N.A. and
26 BAC HOME LOANS SERVICING, L.P.

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 13th day of June, 2011, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Beth E. Terrell, WSBA #26759
Michael D. Daudt, WSBA #25690
Terrell Marshall Daudt & Willie PLLC
936 N 34th Street, Suite 400
Seattle, WA 98103-8869

Phone: (206) 816-6603
Fax: (206) 350-3528
Email: bterrell@tmdwlaw.com
mdaudt@tmdlaw.com

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Executed on 13th day of June, 2011, at [City] , Washington.

s/Leah Burrus
Leah Burrus